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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,970	04/15/2004	Scott J. Gerondale	3011	7529
<div>7590 10/12/2007</div> <div>WALTER A. HACKLER, Ph.D. PATENT LAW OFFICE SUITE B 2372 S.E. BRISTOL STREET NEWPORT BEACH, CA 92660-0755</div>				
			EXAMINER GILBERT, ANDREW M	
			ART UNIT 3767	PAPER NUMBER
			MAIL DATE 10/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/824,970

Applicant(s)

GERONDALE ET AL.

Examiner

Andrew M. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6 and 8 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/20/2007 has been entered.

Acknowledgments

2. This office action is in response to the reply filed on 8/20/2007.
3. In the reply, the applicant amended claims 1, 3, and 4; and cancelled claim 5.
4. Thus, claims 1-4, 6, 8, and 9 are pending for examination.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Sabelman et al (4465478). Sabelman et al discloses a controlled volume injection/aspiration device comprising: a syringe having a body (14), needle (Fig 2), and piston (the syringe plunger) slidably disposed along a body centerline; a shell (10) receiving the syringe; a plunger rack (44) slidably disposed along the body centerline

within said shell; a manually operated control rod (38) disposed in an operative parallel relationship with said centerline (38, Fig 1-5) and slidable there along for moving said plunger rack in a stepwise forward direction causing piston to eject discrete doses of medication (Figs 1-5; Disclosure of Invention) and in a stepwise reverse direction causing piston to aspirate discrete quantities of fluid (Figs 1-5; Disclosure of Invention; wherein the device is fully capable of acting in discrete dosing manner); a window (Fig 1) for view aspirated fluid; a finger accessible button (36) attached to the control rod and extending exterior to said shell (Fig 1-5); for sliding the control rod parallel to the body centerline causing ejection of medicament when moved in one direction and to aspirate fluid when moved in an opposite direction (Figs 1-5); and the syringe being removable from the shell (Fig 1).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sabelman et al in view of Pasricha et al (5674205). Sabelman et al discloses the invention substantially as claimed except for expressly disclosing the medicament is BOTOX. Pasricha et al teaches that it is known to have the medicament be BOTOX for the purpose of injecting a neurotoxin, such as BOTOX, to inhibit neurotransmitter release

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from nerve terminals to treat and alleviate symptoms of certain diseases, such as those arising from chronic smooth muscle disorders. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medicament as taught by Sabelman et al with the BOTOX as taught by Pasricha et al for the purpose of injecting a neurotoxin, such as BOTOX, to inhibit neurotransmitter release from nerve terminals to treat and alleviate symptoms of certain diseases, such as those arising from chronic smooth muscle disorders.

Allowable Subject Matter

9. Claims 3-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claim 9 is allowed.

Response to Arguments

11. Applicant's arguments with respect to claims 1-4, 6, 8, 9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Gilbert whose telephone number is (571) 272-7216. The examiner can normally be reached on 8:30 am to 5:00 pm Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrew Gilbert

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

